

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BERNARD JASPERS,

Petitioner,

v.

KENNETH QUINN,

Respondent.

Case No. C06-5049FDB

REPORT AND
RECOMMENDATION

**NOTED FOR:
July 21st, 2006**

This 28 U.S.C. § 2254 petition for habeas corpus relief has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. Respondent answered this petition and argued the petition is over one year time barred. In addition the respondent argues the petition contains unexhausted but procedurally barred claims. (Dkt. # 11).

Petitioner has filed a motion to dismiss the petition without prejudice. (Dkt. # 14). Petitioner indicates he wishes to seek legal advice before proceeding further and cannot reply to respondents arguments. Respondent has not responded to the motion. Under Local Rule 7 failure to respond to a motion may be deemed as a concession the motion has merit.

The court has considered whether Respondent would be prejudiced by granting petitioner's

1 motion and determines there would be no actual prejudice. If the respondent's position is correct the
2 petition will still be time barred. Further, respondent's failure to file a pleading in opposition to
3 petitioner's motion indicates no opposition to the motion. Accordingly, the court recommends
4 petitioner's motion be **GRANTED** and this petition be **DISMISSED WITHOUT PREJUDICE**.

5 A proposed order accompanies this report and recommendation.

6 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
7 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
8 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
9 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
10 72(b), the clerk is directed to set the matter for consideration on **July 21st, 2006**, as noted in the
11 caption.

12 Dated this 30th day of June, 2006.

13 /s/ J. Kelley Arnold

14 J. Kelley Arnold

15 United States Magistrate Judge
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